

Form NLRB - 501 (2-08)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
CHARGE AGAINST EMPLOYER

INSTRUCTIONS:

DO NOT WRITE IN THIS SPACE	
Case	Date Filed
32-CA-269127	11-17-2020

File an original of this charge with NLRB Regional Director in which the alleged unfair labor practice occurred or is occurring.

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Tesla Gigafactory		b. Tel. No. (b) (6), (b) (7)(C)
d. Address (street, city, state ZIP code) 1 Electric Ave., Sparks, NV 89434		c. Cell (b) (6), (b) (7)(C)
e. Employer Representative (b) (6), (b) (7)(C)		f. Fax No.
i. Type of Establishment (factory, nursing home, hotel) Energy and Automotive Factory		g. e-Mail (b) (6), (b) (7)(C)@tesla.com
j. Principal Product or Service Production of car batteries and packs		h. Location (City and State) Sparks, NV
k. Number of workers at dispute location 5000		

1. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), (1) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices are unfair practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.

2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices)
On about **(b) (6), (b) (7)(C)** 2020, the Employer discriminated against **(b) (6), (b) (7)(C)** by terminating **(b) (6), (b) (7)(C)** in retaliation for **(b) (6), (b) (7)(C)** protected concerted activities regarding safety issues at the plant.

3. Full name of party filing charge (if labor organization, give full name, including local name and number)

4a. (Street, number, city, state, and ZIP code) (b) (6), (b) (7)(C)		4b. Tel. No.
		4c. Cell No. (b) (6), (b) (7)(C)
		4d. Fax No.
		4e. e-Mail (b) (6), (b) (7)(C)

5. Full name of national or international labor organization of which it is an affiliate or constituent unit (to be filled in when charge is filed by a labor organization)

6. DECLARATION
(b) (6), (b) (7)(C) statements are true to the best of

Print Name and Title (b) (6), (b) (7)(C)		Tel. No.
Address: (b) (6), (b) (7)(C)		Office, if any, Cell No. (b) (6), (b) (7)(C)
Date: 11/17/2020		Fax No.
		e-Mail (b) (6), (b) (7)(C)

WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information will cause the NLRB to decline to invoke its processes.

(b) (6), (b) (7)(C)

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January 19, 2020

VIA NLRB E-FILING & ELECTRONIC MAIL

Amy Berbower

Field Attorney

National Labor Relations Board, Region 32

1301 Clay St. Ste 300N

Oakland, CA 94612

Re: Tesla Gigafactory, Case No. 32-CA-269127

Dear Ms. Berbower:

Tesla, Inc. (“Tesla” or the “Company”) provides this supplemental submission to the above-referenced charge filed by (b) (6), (b) (7)(C) and in response to your January 5, 2021 requests for additional information.¹ Specifically, the Region has requested the following additional information and responses in order to complete its investigation.

I. Termination-Related Requests

The Company understands that the Region has requested additional information concerning the process Tesla undertook to review (b) (6), (b) (7)(C) 2020 performance evaluation. On July 1, 2020², Tesla’s Human Resources department circulated a timeline for the 2020 performance evaluation review process, which applied to the reviews for all hourly associates throughout the United States. The timeline established the following approximate dates for each step in the review process:

¹ The Company submits this supplemental statement solely for the Board’s use and requests that the Board preserve the confidentiality of the statement. To that end, the Company further requests that the Board not reveal any of this supplemental statement’s contents to any other person without the Company’s prior written consent, subject of course to requests under the Freedom of Information Act. In addition, the Company reserves the right to supplement or amend this supplemental statement, including its attachments, as necessary.

² All dates herein refer to the year 2020 unless otherwise noted.

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- July 1st – July 8th: Performance Tool Goes Live
- July 20th – July 24th: Review and Final Approvals
- July 27th – July 31st: Performance or Exit Conversations
- July 27th: Merit Increases, Promotions Effective Date
- August 7th: Reviews Available to all Employees

See Exh. A. As stated in the Company's Position Statement, dated December 28 (the "Position Statement"), (b) (6), (b) (7)(C), submitted (b) (6), (b) (7)(C) performance evaluation on (b) (6), (b) (7)(C). See Company's Position Statement at pg. 7; Exh. 10. From there, consistent with both the Human Resources timeline and Tesla's standard practice, (b) (6), (b) (7)(C) performance evaluation was reviewed by management representatives in (b) (6), (b) (7)(C) department and Human Resources, specifically (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) (b) (6), (b) (7)(C).

Thus, Tesla followed its standard 2020 performance evaluation review process, applicable to all United States employees, when reviewing and approving (b) (6), (b) (7)(C) performance review and meeting with (b) (6), (b) (7)(C) to issue (b) (6), (b) (7)(C) termination. What is more, the majority of termination meetings for Gigafactory employees, including (b) (6), (b) (7)(C), occurred between (b) (6), (b) (7)(C).

The Company also understands the Region to request performance evaluation documentation concerning the other Gigafactory (b) (6), (b) (7)(C) who were terminated for receiving a "No" in the "Getting It Done" category of the company-wide 2020 Performance Acceleration program – as referenced in the Company's Position Statement. See Position Statement at pgs. 8-9.³ The Company attaches, as Exhibit B, the performance evaluation feedback for the "Getting It Done" category for each of the terminated employees.

II. Performance Related Requests

The Region has further requested additional information concerning (b) (6), (b) (7)(C) poor performance during the January – June review period (the "Review Period"). First, Tesla understands the Region to request information concerning whether (b) (6), (b) (7)(C) was warned

³ In its Position Statement, the Company stated that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) at the Gigafactory were terminated for receiving a "No" in the "Getting It Done" category. In fact, (b) (6), (b) (7)(C) received a "No," however (b) (6), (b) (7)(C) employee resigned before the termination meeting was held. The relevant performance evaluation feedback for all (b) (6), (b) (7)(C) employees is included in Exhibit B.

about (b) (6), lack of dispatches, (b) (6), (b) (7)(C) jobs, and “time on job” and whether (b) (6) refused to complete any dispatches or (b) (6) during the Review Period. (b) (6), (b) (7)(C) was not warned about (b) (6), lack of dispatches, (b) (6), and “time on job” before the end of the Review Period. (b) (6), (b) (7)(C) however, did not gain access to the Flux data showing (b) (6), (b) (7)(C) poor performance until approximately June – meaning for almost the entire Review Period, (b) (6), (b) (7)(C) was not aware of how significantly (b) (6), (b) (7)(C) was underperforming as compared to (b) (6), peers. Further, (b) (6) are assigned to shifts, based on the needs and requirements of the (b) (6), (b) (7)(C). As stated in the Company’s Position Statement, (b) (6) are assigned on a daily, weekly, monthly, biannual, and annual basis. See Position Statement at pgs. 3-4. (b) (6), (b) (7)(C) generally did not assign (b) (6) or dispatches to specific (b) (6), (b) (7)(C). Instead, all (b) (6), (b) (7)(C) on the shift, including (b) (6), (b) (7)(C), were expected to complete dispatches and (b) (6). Thus, (b) (6), (b) (7)(C) did not refuse to perform any dispatches or (b) (6) because they generally were not assigned specifically to (b) (6), (b) (7)(C). That said, on several occasions (b) (6), (b) (7)(C) told (b) (6), (b) (7)(C) that Tesla (b) (6) were “bullshit.” See *id.* at pg. 4.

Second, Tesla understands the Region to request a response to (b) (6), (b) (7)(C) assertion that “as a more experienced (b) (6), (b) (7)(C), (b) (6) was not routinely assigned dispatches and (b) (6), which routinely went to the less experienced employees.” This claim is false. As an initial matter, as discussed above, (b) (6), (b) (7)(C) did not assign dispatches or (b) (6) to specific (b) (6), (b) (7)(C) – all (b) (6), (b) (7)(C) on the shift, including (b) (6), (b) (7)(C), were expected to share the responsibility for completing the work. Moreover, Tesla expects all (b) (6), (b) (7)(C) to complete dispatches and (b) (6), regardless of level. A (b) (6), (b) (7)(C) level (e.g., (b) (6), (b) (7)(C)(6)) only signifies their degree of knowledge and experience. Being a more senior (b) (6), (b) (7)(C) does not reduce, or otherwise eliminate, the expectation that the (b) (6), (b) (7)(C) will complete dispatches and (b) (6). In fact, two other (b) (6), (b) (7)(C), who worked in the same or similar areas as (b) (6), (b) (7)(C), completed approximately 8-13 times more dispatches than (b) (6), (b) (7)(C) did, with significantly more “time on job,” during the Review Period.

<u>Employee</u>	<u>Total Dispatches Completed</u>	<u>Time on Job</u>
Employee A	142	264.72 hours
Employee B	239	129.50 hours
(b) (6), (b) (7)(C)	18	61.08 hours

Tesla has further attached, as Exhibit C, Flux report data comparing each (b) (6), (b) (7)(C) listed above during the Review Period, which demonstrates

that (b) (6), (b) (7)(C) not only severely underperformed relative to other employees on (b) (6), team, but also relative to other (b) (6), (b) (7)(C) in (b) (6), area. As this evidence makes clear, (b) (6), (b) (7)(C) contention that more experienced (b) (6), (b) (7)(C) perform fewer dispatches or (b) (6), is meritless.

Third, Tesla understands the Region to request a response to (b) (6), (b) (7)(C) assertion that “time on job” reflects time reported in flux reports for activities performed to address incidents that caused line downtime, and that it does not reflect that (b) (6), was unproductive compared to other (b) (6), (b) (7)(C).” This claim is also false. The “time on job” metric reflects the time (b) (6), (b) (7)(C) spend on working all jobs, including dispatches to (b) (6), (b) (7)(C) as well as preventative or proactive work performed to keep lines operating smoothly. Further, as (b) (6), (b) (7)(C) made clear to all (b) (6), (b) (7)(C), including (b) (6), (b) (7)(C), numerous times, (b) (6), (b) (7)(C) must record all time spent working on dispatches and (b) (6), in Flux. *See* Position Statement at pg. 6. Therefore, (b) (6), (b) (7)(C), and indeed all other (b) (6), (b) (7)(C), “time on job” figure captures the time spent working on all jobs.

Fourth, Tesla understands the Region to request a response to (b) (6), (b) (7)(C) assertion that “availability reports would show that the line in (b) (6), area experienced less downtime because of (b) (6), proactive work to prevent downtime.” This claim is also false. Availability reports simply show the percentage of time that a given line is running properly.⁴ The reports, however, do not provide any data on the amount of dispatches, (b) (6), or other work that (b) (6), (b) (7)(C) must perform on the line. During the Review Period, (b) (6), (b) (7)(C) was generally responsible for covering three lines in the top cover and load-unload areas. While one of (b) (6), (b) (7)(C) lines has historically had less downtime – including before (b) (6), (b) (7)(C) became responsible for the line – than other lines, that line, along with (b) (6), (b) (7)(C) two additional lines, afforded (b) (6), (b) (7)(C) numerous opportunities to work on dispatches and (b) (6), (b) (7)(C). Finally, (b) (6), (b) (7)(C) poor dispatch and (b) (6), totals directly contradict (b) (6), claim that (b) (6), lines had less downtime because of (b) (6), proactive work. Had (b) (6), (b) (7)(C) actually performed proactive work to keep (b) (6), lines running, those dispatches and (b) (6), would have been captured in Flux. However, as the evidence demonstrates, (b) (6), (b) (7)(C) performance metrics were significantly lower than those of other (b) (6), (b) (7)(C) on (b) (6), shift and at (b) (6), level.

Fifth, Tesla understands the Region to request information concerning “any policies, procedures or protocols that would explain the reporting of (b) (6), (b) (7)(C) time in the flux software platform.” As the Company stated in its Position Statement, and reiterated in this response, (b) (6), (b) (7)(C) told all (b) (6), (b) (7)(C), including (b) (6), (b) (7)(C) numerous times that they must record all time spent working in Flux. *See* Position

⁴ The program Tesla uses to track line availability does not allow the Company to pull availability reports for the Review Period.

Amy Berbower
January 19, 2020
Page 5

Statement at pg. 6. All (b) (6), (b) (7)(C) [REDACTED], including (b) (6), (b) (7)(C) [REDACTED], received training on how to use Flux and record time on the platform. See attached as Exh. D, a list of Flux training that (b) (6), (b) (7)(C) [REDACTED] received during (b) (6), (b) (7)(C) [REDACTED] employment with Tesla. At various times throughout 2020, (b) (6), (b) (7)(C) [REDACTED] also assisted newly hired employees with using Flux. (b) (6), (b) (7)(C) [REDACTED] never raised any concerns to (b) (6), (b) (7)(C) [REDACTED] about using Flux or the requirement to record all time worked on the platform.

Please let us know if you have any questions or need any additional information to complete the Region's investigation.

Sincerely,

Douglas R. Hart

Douglas R. Hart

DRH

cc: Richard J. Marks



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 32
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January 26, 2021

(b) (6), (b) (7)(C)

**Re: Tesla Gigafactory
Case 32-CA-269127**

Dear (b) (6), (b) (7)(C)

We have carefully investigated and considered your charge that Tesla Gigafactory has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

Your charge alleges that the Employer violated Section 8(a)(1) of the Act by terminating you on (b) (6), (b) (7)(C) 2020 in retaliation for your protected concerted activities regarding safety issues at the Employer's plant in Sparks, Nevada. While the investigation disclosed that on numerous occasions in 2020 you raised safety issues with the Employer both individually and following discussions of those safety issues with other employees, the evidence was insufficient to establish a causal connection between your conduct and the Employer's decision to terminate your employment. In the absence of evidence to demonstrate that Employer hostility toward your protected concerted activities "contributed to" its decision to take an adverse action against you, there is no basis to find a violation under the Act. Therefore, I am dismissing your charge in its entirety. See, *Director, Office of Workers' Comp. Programs v. Greenwich Collieries*, 512 U.S. 267, 278 (1994), *clarifying NLRB v. Transportation Management*, 462 U.S. 393, 395, 403 n.7 (1983); *Wright Line*, 251 NLRB 1083, 1089 (1980), *enfd. on other grounds* 662 F.2d 899 (1st Cir. 1981), *cert. denied* 455 U.S. 989 (1982).

Charging Party's Right to Appeal: The Charging Party may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: You must file your appeal electronically or provide a written statement explaining why electronic submission is not possible or feasible (Written instructions for the NLRB's E-Filing system and the Terms and Conditions of the NLRB's E-Filing policy are available at www.nlr.gov. See [User Guide](#). A video demonstration which provides [step-by-step instructions](#) and frequently asked questions are also available at www.nlr.gov. If you require additional assistance with E-Filing, please contact e-Filing@nlrb.gov).

You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. If you cannot file electronically, please send the appeal and your written explanation of why you cannot file electronically to the **General Counsel** at the **National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

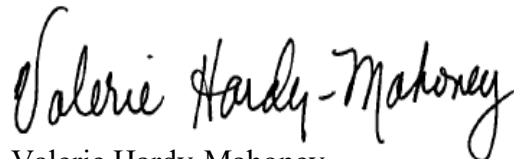
The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **February 9, 2021**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than February 8, 2021. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before February 9, 2021**. The request may be filed electronically through the **E-File Documents** link on our website www.nlr.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after February 9, 2021, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor requests to limit our use of appeal statements or evidence. Upon a request under the Freedom of Information Act (FOIA) by a party during the processing of an appeal, the Agency's FOIA Branch discloses appeal statements, redacted for personal privacy, confidential source protection, or other applicable FOIA exemptions. In the event the appeal is sustained, any statement or material submitted may be introduced as evidence at a hearing before an administrative law judge. However, certain evidence produced at a hearing may be protected from public disclosure by demonstrated claims of confidentiality.

Very truly yours,



Valerie Hardy-Mahoney
Regional Director

Enclosure

cc:

(b) (6), (b) (7)(C)

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